

REMARKS

The examiner indicated that Applicant's amendments regarding claims 1-18 overcome the rejection under 35 USC § 101. The examiner withdrew the rejection and indicated that the claims were in condition for allowance.

The examiner indicated that "Applicant's arguments regarding to claims 19-26 do not overcome 35 USC § 101 because the claims recite a computer program product comprising "instructions" that is not clearly computer executable instructions."

Applicant disagrees. However, in order to advance prosecution applicant has amended claim 19 to recite "computer-executable instructions." This is supported by at least Fig. 1 and accompanying discussion, e.g., host computer 17. Also, note that the preamble does not merely recite instructions, but requires "... instructions for causing a computer to."

Applicant also notes however that under the examiner's rationale, only claims 19 and 20 should have been rejected, because Claims 21-26 depend from claims 1 or 10 or intermediate claims thereof, which claims are allowed.

Applicant's amendment places the case in condition for allowance and could not have been earlier presented because Applicant was unaware of the current reasoning employed by the examiner. Applicant submits that the amendment should be entered and the case passed to issue.

The case is in condition for allowance, there being no prior art rejections, indication of allowable subject matter and only minor consideration required by the examiner since the Applicant has adopted the suggestion made by the examiner.

No fee is due. Please apply any other charges or credits to deposit account 06-1050.

Applicant : Richard G. Ketchum et al.
Serial No. : 09/208,942
Filed : December 10, 1998
Page : 9 of 9

Attorney's Docket No.: 09857-0009001

Respectfully submitted,

Date: May 1, 2009

/Denis G. Maloney/
Denis G. Maloney
Reg. No. 29,670

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (877) 769-7945

22174471.doc